

1 Michele R. Stafford, Esq. (SBN 172509)
2 Matthew P. Minser, Esq. (SBN 296344)
3 SALTZMAN & JOHNSON LAW CORPORATION
4 44 Montgomery Street, Suite 2110
5 San Francisco, California 94104
6 Telephone: (415) 882-7900
7 Facsimile: (415) 882-9287
8 Email: mstafford@sjlawcorp.com
9 Email: mminser@sjlawcorp.com

10 Attorneys for Plaintiffs, District Council 16 Northern
11 California Health and Welfare Trust Fund, et al.

12 UNITED STATES DISTRICT COURT
13
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 DISTRICT COUNCIL 16 NORTHERN
16 CALIFORNIA HEALTH AND WELFARE TRUST
17 FUND; and its JOINT BOARD OF TRUSTEES;
18 CHRIS CHRISTOPHERSEN and JOHN
19 MAGGIORE, Trustees;

20 BAY AREA PAINTERS AND TAPERS PENSION
21 TRUST FUND, and its JOINT BOARD OF
22 TRUSTEES; CHRIS CHRISTOPHERSEN and
23 MARIAN BOURBOULIS, Trustees;

24 DISTRICT COUNCIL 16 NORTHERN
25 CALIFORNIA JOURNEYMAN AND
26 APPRENTICE TRAINING TRUST FUND, and its
27 JOINT BOARD OF TRUSTEES; CHRIS
28 CHRISTOPHERSEN and MARIAN
BOURBOULIS, Trustees; and

DISTRICT COUNCIL 16 OF THE
INTERNATIONAL UNION OF PAINTERS AND
ALLIED TRADES,

Plaintiffs,

v.

LIDINI COMPANY *dba* GREEN COMMERCIAL
PAINTING *dba* KITCHEN ART, INC., a
California Corporation; AL NOUREDDINI, an
Individual,

Defendants.

Case No.:

COMPLAINT

1 Parties

2 1. The District Council 16 Northern California Health and Welfare Trust Fund
3 (“Health Fund”); Bay Area Painters and Tapers Pension Trust Fund, including the Bay Area
4 Painters and Tapers Pension Trust Fund Annuity Plan (together “Pension Funds”); and District
5 Council 16 Northern California Journeyman and Apprentice Training Trust Fund (“Apprentice
6 Fund”) are employee benefit plans as defined in the Employee Retirement Income Security Act of
7 1974 (“ERISA”) § 3(3), 29 U.S.C. § 1002(3). The Joint Board of Trustees (“Trustees”) of said
8 Funds are the named fiduciaries of the Funds under ERISA § 302(a), 29 U.S.C. § 1002(a). Chris
9 Christophersen and John Maggiore are Trustees, and fiduciaries, of the Health Fund. Chris
10 Christophersen and Marian Bourboulis are Trustees, and fiduciaries, of the Pension Fund and
11 Apprentice Fund. The Health Fund, Pension Funds, Apprentice Fund, and their respective
12 Trustees and fiduciaries are collectively referred to herein as “ERISA Plaintiffs” or “Plaintiffs.”

13 2. District Council No. 16 of the International Union of Painters and Allied Trades
14 (“Union”) is a labor organization as defined in § 2(5) of the National Labor Relations Act
15 (“NLRA”), 29 U.S.C. § 152(5) and is represented by counsel herein for the limited purpose of
16 collecting union dues owing as part of the subject contribution claims of ERISA Plaintiffs, and not
17 for any other cause of action. The Union expressly reserves its rights to pursue any other cause of
18 action on its own behalf.

19 3. Lidini Company *dba* Green Commercial Painting *dba* Kitchen Art, Inc., a
20 California Corporation; and Al Nouredini, an Individual (collectively “Defendants”), are
21 employers by virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).

22 Jurisdiction

23 4. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by
24 virtue of ERISA § 502, 29 U.S.C. § 1132, in that ERISA Plaintiffs seek to enforce the provisions
25 of ERISA and the terms of their plans, seek to enjoin the acts and practices which violate ERISA,
26 seek equitable relief to redress such violations, and seek all other appropriate relief under ERISA.

27 5. Jurisdiction exists in this Court over all the claims by virtue of the Labor
28

1 Management Relations Act (“LMRA”) § 301, 29 U.S.C. § 185, in that Plaintiffs seek to enforce
 2 the terms and conditions of a valid Bargaining Agreement.

3 6. To the extent jurisdiction over any claim does not exist under ERISA or the
 4 LMRA, supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. §
 5 1367 in that they arise out of a common nucleus of operative facts that form the basis of the
 6 federal claims asserted herein, each of which has a substantial ground in federal jurisdiction.

7 Venue

8 7. Venue is conferred upon this Court by ERISA § 502, 29 U.S.C. § 1132. Where an
 9 action is brought under ERISA § 502 in a district court of the United States, it may be brought at
 10 Plaintiffs’ discretion, in the district where the plan is administered, where the breach took place, or
 11 where a defendant resides or may be found, and process may be served in any other district where
 12 a defendant resides or may be found. ERISA Plaintiffs’ Trust Funds are administered in this
 13 district at their principal place of business in Dublin, California. Thus, jurisdiction and venue are
 14 properly grounded with this Court.

15 8. Venue exists in this Court with respect to the claims under LMRA § 301(a), 29
 16 U.S.C. § 185, as this Court has jurisdiction over the parties, as the Union maintains its principal
 17 place of business in this district, its duly authorized officers or agents are engaged in representing
 18 employee members in this district, and the claims arise in this district.

19 Intradistrict Assignment

20 9. The basis for assignment of this action to this court’s Oakland Division is that all of
 21 the events and omissions giving rise to Plaintiffs’ claims occurred in the County of Alameda,
 22 where ERISA Plaintiffs’ Funds and the Bargained Plans are administered, and where Defendants
 23 therefore failed to fulfill their statutory and contractual obligations to Plaintiffs.

24 Bargaining Agreement

25 10. Defendants entered into the Northern California Painters Master Agreement
 26 (“Bargaining Agreement”) between the Union and the Northern California Painting and Finishing
 27 Contractors Association, requiring employer contributions to Plaintiffs’ ERISA Funds, to the
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1 Union for union dues, and to the other plans more fully described in the Bargaining Agreement.
2 Plaintiffs are third party beneficiaries of the Bargaining Agreement. Individual Defendant Al
3 Nouredдини executed the Agreement of Employers Regarding Bay Area Painters and Tapers Trust
4 Funds on behalf of Corporate Defendant Lidini Company *dba* Green Commercial Painting, which
5 provides that the person signing on behalf of the employer is personally and individually liable for
6 the employer's contributions as required by the Bargaining Agreement. Plaintiffs are informed and
7 believe that Lidini Company, Green Commercial Painting, and Kitchen Art, Inc. are all a single
8 employer.

9 11. Under the terms of the Bargaining Agreement, Plaintiffs' Trustees are authorized to
10 collect monies due by Defendants to the following plans: the IUPAT Finishing Trades Institute,
11 the IUPAT Labor-Management Cooperation Initiative, the Work Preservation Fund, the Northern
12 California Painting and Finishing Contractors Industry Fund, the Skills, Safety, Supervisor &
13 Survival Training Awards Recognition (STAR) Program, Inc., the Vacation/Holiday Fund, and the
14 IUPAT Political Action Together-Political Committee (collectively referred to herein as the
15 "Bargained Plans").

16 12. Under the Bargaining Agreement and the governing documents of ERISA Plaintiffs
17 (the "Trust Agreements"), which are incorporated into the Bargaining Agreement and made
18 binding on Defendants, Defendants are required to regularly pay to ERISA Plaintiffs, the
19 Bargained Plans, and the Union, certain sums of money, the amounts of which are determined by
20 the hours worked by Defendants' employees. Contributions are due on the fifteenth (15th) day of
21 the month following the month hours were worked, and considered delinquent if not received by
22 the last day of that month. Defendants are also required, pursuant to the Bargaining and Trust
23 Agreements, to pay liquidated damages in the amount of ten percent (10%) for each delinquent
24 contribution, but in the amount of twenty percent (20%) for each delinquent contribution which is
25 the subject of litigation. Moreover, the Bargaining and Trust Agreements provide that interest
26 accrues on delinquent contributions at the rates reasonably set by the Trustees from the day
27 contributions become delinquent, which is the first (1st) day of the month following the month in
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1 which payment was due, until paid.

2 13. The Bargaining Agreement further requires Defendants to maintain time records or
3 time cards, and to submit any and all relevant records to Plaintiffs for examination to determine
4 whether Defendants are making full and prompt payment of all sums required to be paid to
5 Plaintiffs. Should an audit of Defendants' records reveal Defendants have failed to provide full
6 and prompt payment of all sums due, Defendants must reimburse Plaintiffs for the amounts due,
7 including audit fees, in addition to any other obligations pursuant to the Bargaining and Trust
8 Agreements.

9 Factual Allegations

10 14. Defendants have failed and refused to comply with an audit of their records for the
11 period from May 1, 2014 through June 30, 2014.

12 15. Plaintiffs are also entitled to recover any and all contributions, and all liquidated
13 damages and interest on delinquent contributions, found due on timecards, audit, or otherwise
14 including estimated contributions for months Defendants failed to report to Plaintiffs, through the
15 time of Judgment. Plaintiffs reserve the right to conduct a further audit to determine whether there
16 are any additional amounts due from Defendants.

17 **FIRST CAUSE OF ACTION**
18 **For Audit Compliance, Payment of Delinquent Contributions, Interest, Liquidated**
19 **Damages, Attorneys' Fees and Costs Against Defendants**

20 16. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 15, above.

21 17. Defendants have a contractual duty to timely pay the required contributions to
22 Plaintiffs and the Bargained Plans, and to timely pay dues to the Union, pursuant to the Bargaining
23 Agreement and Trust Agreements. Defendants also have a contractual duty under the Bargaining
24 Agreement, and Trust Agreements incorporated therein, to permit an audit of their records to
25 determine whether it is making full and prompt payment of all sums required to be paid by it to
26 Plaintiffs, and to pay Plaintiffs all amounts found due as a result of an audit, including audit fees.

27 18. In addition, Defendants have a statutory duty to timely make the required payments
28 to Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

19. By refusing to permit an audit of their records, Defendants breached the Bargaining Agreement and are in violation of ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

20. Defendants' failure and refusal to permit the audit and pay the required contributions was at all times, and still is, willful. Defendants continue to breach the Bargaining Agreements, and incorporated Trust Agreements, by failing to permit the audit and pay all amounts owed as alleged. Said refusal is unjustified and done with knowledge and intent.

21. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing and irreparable injury, loss and damage unless Defendants are ordered specifically to perform all obligations required on Defendants' part to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the LMRA, 29 U.S.C. §§ 141-197, and the Bargaining and Trust Agreements, and are restrained from continuing to refuse to perform as required thereunder.

22. This Court is authorized to issue injunctive relief based on the traditional standard. As set forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the possibility that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The balance of hardships and advancement of public interest favor ERISA Plaintiffs.

23. This Complaint does not in any manner relate to statutory withdrawal liability that may or may not be assessed against Defendant. ERISA Plaintiffs expressly reserve the right to pursue any such withdrawal liability claims against Defendants as provided by ERISA Plaintiffs' Plan Documents, Trust Agreements, and the law.

Prayer

WHEREFORE, Plaintiffs pray as follows:

1. For an order,

(a) requiring that Defendants comply with their obligations to Plaintiffs under the terms of the Bargaining Agreements and the Trust Agreements, including permitting an audit of their records as requested by Plaintiffs;

(b) enjoining Defendants from violating the terms of those documents and of ERISA; and

1 (c) enjoining Defendants from disposing of any assets until said terms have
2 been complied with, and from continuation or operation of Defendants' business until said terms
3 have been complied with.

4 2. For a judgment against Defendants as follows:

5 (a) Any unpaid contributions, due at time of Judgment, including those
6 determined as due by audit, timecards, or otherwise, including estimated contributions for any
7 months Defendants fail to report to Plaintiffs pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. §
8 1132(g)(2)(A);

9 i. To ERISA Plaintiffs and the Bargained Plans, in accordance with
10 ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreements;

11 ii. To the Union in accordance with the Bargaining Agreements.

12 (b) Liquidated damages on all late-paid and unpaid contributions in an amount
13 provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs,
14 ERISA § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

15 (c) Interest on all late-paid and unpaid contributions at the rates set in
16 accordance with the Bargaining Agreements, the Trust Agreements, and ERISA § 502(g)(2)(B),
17 29 U.S.C. § 1132(g)(2)(B).

18 3. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit
19 fees, in accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and
20 in accordance with the Bargaining Agreements for all Bargained Plans; and with LMRA § 301,
21 29 U.S.C. § 185, for all Plaintiffs.

22 4. That the Court retain jurisdiction of this case pending compliance with its orders.

23 5. For such other and further relief as the Court may deem just and proper.

24 DATED: October 18, 2017

SALTZMAN & JOHNSON LAW
CORPORATION

By:

/S/

Matthew P. Minser
Attorneys for District Council 16 Northern
California Health and Welfare Trust Fund, et al.